

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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MANGO LABS, LLC,	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 1:23-cv-00665-LJL
v.	:	
	:	
AVRAHAM EISENBERG,	:	
	:	
Defendant.	:	
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**DEFENDANT’S SUBMISSION IN FURTHER OPPOSITION TO PLAINTIFF’S
APPLICATION FOR A PRELIMINARY INJUNCTION**

Defendant Avraham Eisenberg (“Defendant” or “Mr. Eisenberg”) respectfully submits this Submission in Further Opposition to the Application of Plaintiff Mango Labs, LLC (“Plaintiff” or “Mango Labs”) for a Preliminary Injunction (ECF No. 6, “PI Motion”).

I. INTRODUCTION

At the conclusion of the February 24, 2023 hearing on the PI Motion, the Court directed the Parties to provide a supplemental submission regarding two issues: (1) whether there are Mango Markets account holders who do not also hold Mango (MNGO) tokens; and (2) whether the affirmative vote of a majority of the Mango token holders would bind every Mango Market account holder.

Evidence concerning these two issues is attached to the Declaration of Mark Berkowitz submitted herewith. An overview of this evidence is provided below. As demonstrated, Mango Markets is a decentralized exchange whose operation and continued existence hinges on collective voting, which impact the rights of all account holders.

II. MANGO MARKETS GOVERNANCE AND VOTING

Mango Markets is an exchange and trading protocol with “decentralized governance.” (Ex.¹ 3, Litepaper at 1). Specifically, “Mango Markets is governed by MNGO token holders via the Mango DAO.” (Ex. 4, Overview at 1; *see also* Ex. 5 at 1 (“MNGO is a governance token whose ownership grants voting rights on proposals to dictate Mango Markets protocol’s future.”)). “Collectively, the token holders have the power to upgrade the protocol as they see fit, only constrained by the checks-and-balances of the DAO.” (Ex. 3 at 6). “Anybody with 0.1% of Mango Token staked can propose a governance action” (Ex. 3 at 6). “Proposals are executable code, not suggestions for a team or foundation to implement.” (Ex. 3 at 6). “All proposals are subject to

¹ As used herein, “Ex.” refers to the exhibits to the Supplemental Declaration of Mark Berkowitz, dated February 28, 2023.

a 3 day voting period, and any Mango Token staker can vote for or against the proposal.” (Ex. 3 at 6). “If a majority, and at least 2% of the total Mango Token supply are cast for the proposal, it . . . can be implemented after 2 days.” (Ex. 3 at 6; *see also* 2/24/23 Hr’g Tr. 21:14-17 (“Everyone -- the way Mango works is it is a decentralized governance forum so all of this is out in the open. People are coming in, they’re trying to figure out what to do, they’re putting on proposals, they’re voting on it.”)).

III. MANGO ACCOUNT HOLDERS ARE SUBJECT TO THE GOVERNANCE TERMS

Anyone with a supported cryptocurrency wallet (e.g., Sollet, Phantom) can connect to Mango Markets, create an account, and begin trading, borrowing and lending cryptocurrencies and other tokens. (Ex. 6). In other words, there does not appear to be a requirement that a Mango Markets user also hold MNGO tokens or participate in governance. All users, however, are subject to the governance terms and actions taken by the DAO, which are prominently displayed in the Mango Markets’ user interface. (Ex. 7 (providing links to platform “Documentation” and “Governance”); *see also* Ex. 11 (Mango DAO “Governance” page showing recent proposals)).

IV. THE SETTLEMENT AND RELEASE AGREEMENT IS BINDING

As discussed, the central feature underlying Mango Markets is its autonomous governance, including the protocol’s ability to vote on and execute proposals. The proposal that resulted in the October 2022 Settlement and Release Agreement (“Settlement Agreement”), which Mango Labs seeks to overturn here (ECF No. 1 ¶¶ 83-88), passed by overwhelming majority. Specifically, just under 490 million votes were cast, with 96.9% voting in favor of the Proposal. (ECF No. 9-2 at 3 (showing 473,166,649 “yes” votes and 16,601,348 “no” votes). According to the SEC, there were

“approximately 500 million [MNGO] tokens in circulation” as of October 2022.² (Ex. 8 ¶¶ 2, 74). Put simply, a substantial portion of MNGO token holders voted on the Proposal leading to the Settlement Agreement.

During the PI Hearing, Mango Labs suggested that, in this case, “you have a bunch of depositors here that never waived any claims and then they transferred them to Mango Labs.” (Hr’g Tr. 52:3-7). Mango Labs’ position is contrary to Mango Markets’ own governance terms, as well as the events surrounding the approval and execution of the terms of the Settlement Agreement. Indeed, the process for Mango Markets’ users to obtain their reimbursements under the Settlement Agreement, turned on collective voting by the Mango DAO. (Ex. 9 (“Claim your lost tokens *as approved by the DAO vote.*”); Ex. 10 (DAO proposal relating to user reimbursement procedure)). As discussed during the Hearing, a proposal and vote by the DAO provided funding for the instant case. (Hr’g Tr. 19:11-13).

In sum, irrespective of the whether there is complete identity between Mango Markets account holders (“depositors”) and MNGO token holders, the Settlement Agreement was designed to, and in fact, did resolve the matter at issue for all Mango Markets account holders. (Hr’g Tr. 19:22-20:12 (acknowledging that all Mango Markets depositors “got a hundred cents on the dollar” are “back to the status quo”).

² According to the Mango Markets’ Litepaper, 500 million MNGO token would be sold to the public and 500 million tokens would be given to the creators of Mango Markets. (Ex. 3 at 4-5).

Respectfully submitted,

Dated: February 28, 2023

By: *s/ Mark Berkowitz*

Mark Berkowitz

Richard J.L. Lomuscio

TARTER KRINSKY & DROGIN LLP

1350 Broadway

New York, NY 10018

Tel.: (212) 216-8000

Fax: (212) 216-8001

E-mail: mberkowitz@tarterkrinsky.com

rlomuscio@tarterkrinsky.com

Attorneys for Defendant Avraham Eisenberg